

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3739 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.M.SONI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes.
2. To be referred to the Reporter or not? Yes.

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3. Whether Their Lordships wish to see the fair copy of the judgement? No.
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.
5. Whether it is to be circulated to the Civil Judge? No.

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NARANBHAI MUMAYABHAI GOHIL

Versus

DIST. POLICE SUPERINTENDENT

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Appearance:

MR BC DAVE for Petitioner

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CORAM : MR.JUSTICE S.M.SONI

Date of decision: 23/12/96

#### ORAL JUDGEMENT

Petitioner by this petition under Article 226 of the Constitution of India has challenged the order dated 24-4-1985 retiring him on invalid pension.

2. The petitioner joined service as an Unarmed Police Constable in the Police Department at Bhuj under the order of respondent no.1 on 15-1-1977. He was then

sent for training for 8 months and was posted at Gandhidham. In the year 1980 he met with accident and his left leg was required to be amputated. However, on applying artificial leg he was then posted at Bhuj in Modus Operandi Bureau ( MOB ) in the year 1981. He was then sent for VHP Operator training in the year 1982 and was posted as VHP Operator ( RTPC ) at Anjar in the year 1983. The petitioner was then made to retire compulsorily by the order of respondent no. 1 dated 24-4-1985. This order of retirement is challenged in this petition.

3. It is the case of the petitioner that the said order asking the petitioner to retire on invalid pension is in total disregard of the provisions of Rule 202 A (1) of the Bombay Civil Service Rules. According to the petitioner if the petitioner is found invalid under the said Rule then in any case in view of the nature of the permanent disability if no useful purpose will be served by an appeal, then also he was required to be informed that if he so desires, he may within one month submit to the Authority a request to be examined by the Medical Appeal Board and before that the Authority is required to come to the conclusion that the Government servant is completely and permanently incapacitated for further service. Neither of the requirements under the said Rule are being with and straightway the order retiring the petitioner on invalid pension is passed. The said order is therefore invalid and contrary to the Rules. It is also bed, unjust and violative of the principle of natural justice as the petitioner is not given any opportunity to explain his case against alleged inference that he has become completely and permanently incapacitated. The order, therefore, should be quashed and set aside and the petitioner be declared to be in employment.

4. On the notice of rule being served, respondent no.1 has filed the affidavit in reply. By the said affidavit it is averred that pursuant to the report dated 15-4-1985 of the Medical Board the petitioner has been retired on invalid pension. It is further stated that

'the petitioner has been suffering from Tuberculosis for long. I say that since 1978 the petitioner had to go time and again go on TB leave and again the petitioner had to be hospitalised in the year 1980-81. I say that because of this disease the petitioner could not discharge his duty effectively. Therefore, the petitioner was sent for examination by Medical

Board, Jamnagar and was examined on 25-1-1985. The Medical Board expressed its opinion through its report dated 30-1-85. However, by a letter dated 29-3-85 a further opinion was sought of the Medical Board particularly keeping in view the type of duties performed, by the petitioner. I say that the Medical Board after examining the petitioner's case keeping in view the duties to be performed by the petitioner declared him permanently unfit by its report dated 15-4-85. I say that thus the petitioner was required to be retired on invalid pension."

It is further stated that the representation has been received by the Deputy Inspector General of Police, Saurashtra North Range, Rajkot and at his direction the record of the petitioner's case has been forwarded to him and the said representation is pending before the Deputy Inspector General of Police, Rajkot. In my opinion, these averments are relevant for the purpose of considering the contention raised in this petition. It will be relevant to state at this juncture that though the respondents are duly served neither of them have chosen to remain present before this Court either personally or through their advocate.

5. Short question which requires to be considered is whether the order passed to retire the petitioner on invalid pension is passed in accordance with the provisions of Rule 202A (1) of the Bombay Civil Services Rules or not. Rule 202A (1) of the said Rules is relevant for this purpose which reads as under :-

"202-A (1) :- If a competent authority comes to the conclusion on the report of a medical officer or any of the Standing Medical Boards that a Government servant should be retired on invalid pension, it shall inform the Government servant that he has been declared to be completely and permanently incapacitated for further service and that it is proposed to invalid him. Except where it is clear that the Government servant himself desires to be invalided or where it is obvious from the nature of the disability that no useful purpose will be served by an appeal, the Government servant should at the same time, be informed that, if he so desires, he may within one month submit to the said authority a request to be examined by a Medical Appeal Board, supported by (a) prima facie evidence that good ground for an appeal exists, and (b) accompanied

by a treasury receipt for Rs. 48. The Government servant shall be informed that the appeal cannot be claimed as of right but that, if an application as above be made it will be considered. The Government servant concerned should also be informed of the arrangements regarding the cost of the Appeal Board set forth in Rule 202-B below, but he should not be informed of the reasons which led the medical officer or the Standing Medical Board to recommended his invaliding."

6. Under the above Rule, it is necessary for the competent authority first to come to the conclusion to accept the report and conclude that the Government servant is required to be retired on invalid pension. After recording that conclusion it is further necessary for the competent authority to decide that no useful purpose will be served by an Appeal in view of the nature of the disability certified by the Medical Board of the Doctors. On arriving at such a conclusion, it is necessary for the competent authority to hold that the Government servant be informed that if he so desires he may within one month submit to the said authority a request to be examined by the Medical Appeal Board. In view of this provision of Rule 202-A it was necessary for the competent authority to inform the petitioner that if he so desires he may prefer an appeal. If the competent authority has come to the conclusion that in view of the nature of the disability certified by the Medical Board no useful purpose will be served. No such decision is taken by the competent authority nor the petitioner is informed about his right to prefer an appeal. On the contrary when the petitioner was examined by the Standing Medical Board it is certified that he was fit for duty as the nature of the sickness found was Tuberculosis and he was advised for periodical check up. The said Certificate was given by the Standing Medical Board on 30-1-1985 that the petitioner is not fit for field work but can do office work and he should come for follow up action on 26-7-1985. It is surprising that what happened in two days that the petitioner was required to be examined by the Medical Board again and was asked then to retire on invalid pension without following the procedure contemplated in the Rule referred to above. It is also surprising that the petitioner is not supplied a fresh Certificate of that disability which called upon the competent authority to decide to retire him on invalid pension. All the actions and consequential orders passed by the department is in total disregard and defiance of Rule 202-A (1) of the Bombay Civil Services Rules. In

view of noncompliance of requirements of Rule 202-A (1) of the said Rules, the impugned order is required to be quashed and set aside.

7. Apart from this, in my opinion the impugned order also suffers from the vice of noncompliance of principle of natural justice, when the competent authority got the certificate from the Standing Medical Board showing the nature of the disability of the petitioner, the petitioner was required to be furnished the same. Unless the petitioner knows the nature of sickness which was not as certified earlier, then he may have something to say in the matter about the same. Thus, in my opinion noncompliance of this also makes the order bad. The above view is supported by two judgments reported in (i) 1992 (1) GLH (UJ) 3, and (ii) 1987 (2) GLH 239. The said judgments squarely covers the case of the petitioner. I do not propose to deal with the said judgments in detail.

8. In the result, the petition is allowed. The impugned order retiring the petitioner on invalid pension is quashed and set aside. The petitioner should be treated as if he is on continue service, if he is not retired. He shall be paid all the benefits as if he would have been in service. The respondents shall be at liberty to comply with Rule 202-A of the Bombay Civil Services Rules from the stage of receipt the Certificate of the Board declaring that the nature of the sickness of the petitioner requires him to retire on invalid pension. Rule is made absolute accordingly, with no order as to costs.

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